

UNITED STATES OF AMERICA,

and

COMMONWEALTH OF PENNSYLVANIA,

Plaintiffs,

v.

J & L SPECIALTY STEEL, L.L.C.,

Defendant.

Civil No.

Consent Decree

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	4
II.	APPLICABILITY	4
III.	DEFINITIONS	4
IV.	CIVIL PENALTY	5
V.	COSTS	9
VI.	SUBMISSION OF DOCUMENTS	9
VII.	COMPLIANCE WITH APPLICABLE LAWS	11
VIII.	RESERVATION OF RIGHTS	11
IX.	AUTHORITY	13
X.	NOTICE AND COMMENT	13
XI.	RETENTION OF JURISDICTION	13
XII.	MODIFICATION	14
XIII.	TERMINATION	14

UNITED STATES OF AMERICA,)	
)	
and)	Civil No.
)	
COMMONWEALTH OF PENNSYLVANIA,)	
)	
Plaintiffs,)	
)	
v.)	Consent Decree
)	
)	
J & L SPECIALTY STEEL, L.L.C.,)	
)	
Defendant.)	
)	

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint seeking injunctive relief and civil penalties for Defendant J & L Specialty Steel, L.L.C.'s ("J & L" or "Defendant") alleged violations of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., at its steel manufacturing facility located in Midland, Pennsylvania;

2

amended, 35 P.S. §§ 691.1 et seq., and the regulations promulgated thereunder, at Defendant's Midland, Pennsylvania, facility;

WHEREAS, J & L has taken actions to remedy the violations alleged in the Complaints;

WHEREAS, the parties agree that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is appropriate;

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith and will avoid prolonged and complicated litigation among them; that this Consent Decree represents a settlement of Defendant's civil liability for the violations alleged in the United States' Complaint and the Commonwealth's Complaint in Intervention (hereinafter "the Complaints"), and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, the United States has reviewed the Financial Information submitted by J & L and has concluded that J & L has the ability to make the penalty payment required by this Consent Decree without enduring undue financial hardship;

WHEREAS, by entering into this Consent Decree Defendant J & L does not admit liability for the violations alleged in the Complaints;

NOW, THEREFORE, before taking any testimony, upon the pleadings and without adjudication of any issue of fact or law, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties to, and the subject matter of this Decree pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. § 1319 and 1365, and 28 U.S.C. §§ 1331, 1345, 1355. Venue is proper in this District pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391(b) and (c) and 1395(a). The Complaints state claims upon which relief may be granted against Defendant under Sections 309 and 505 of the Clean Water Act, 42 U.S.C. §§ 1319 and 1365, and the Clean Streams Law of Pennsylvania, as amended, 35 P.S. §§ 691.1.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon Plaintiffs, the United States of America and the Commonwealth of Pennsylvania, and Defendant, including Defendant's directors, officers, employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting under the control or direction of the Defendant.

3. Upon sale or transfer of the Midland Facility, Defendant shall provide a copy of this Consent Decree to each purchaser or successor in interest. The sale or transfer of ownership or operation of the Midland Facility does not relieve Defendant from its obligations under this Consent Decree, unless consented to in writing by the United States and DEP.

III. DEFINITIONS

4. Unless otherwise explicitly defined herein, terms used in this Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq.

5. In addition, whenever terms listed below are used in this Consent Decree, the following definitions apply:

A. "DEP" means the Pennsylvania Department of Environmental Resources, renamed the Pennsylvania Department of Environmental Protection, P.L. 89 No. 18, dated June 28, 1995, effective July 1, 1995, 71 P.S. §§ 1340.501 et seq., and any successor agency or department.

B. "EPA" means the United States Environmental Protection Agency and any successor agency or department.

C. "Financial Information" means those financial documents and information identified in the Declaration attached hereto as Appendix 1.

D. "Midland Facility" means the steel making plant owned and operated by J& L Specialty Steel, L.L.C. in Midland, Pennsylvania.

E. "United States" means United States of America on behalf of EPA.

IV. CIVIL PENALTY

6. Defendant shall pay a civil penalty of one hundred thousand dollars (\$100,000) (the "Civil Penalty") in settlement of the civil violations alleged by the United States and the Commonwealth of Pennsylvania in their Complaints, through and including the date of lodging of this Decree.

7. Prior to the lodging of this Consent Decree, Defendant shall establish an interest-earning escrow account or similar trust account meeting the requirements of this Decree and shall deposit the \$100,000 Civil Penalty required to be paid under this Decree to that account immediately upon establishment of the account. Prior to lodging of this Consent Decree, Defendant shall provide to the United States, EPA, and DEP by overnight mail directed to the addresses identified in Paragraph 15 of this Decree, copies of the documents establishing and funding the escrow or trust account, and shall include the identities of the financial institution

and of the escrow agent or trustee, the account number or other identifying designation under which the escrow account or trust fund is established, and a statement from the trustee for the trust fund or escrow agent for the escrow account demonstrating that the account or fund holds cash in the amount of \$100,000. The correspondence shall also reference the Department of Justice case number 90-5-1-1-08243.

8. The funds deposited in the escrow or trust account established pursuant to Paragraph 7, above, are solely for the purpose of payment of the Civil Penalty required by this Consent Decree and may not be withdrawn by any person except to make the payment required by Paragraph 9 of this Consent Decree, unless the Court determines that entry of this Consent Decree is not in the public interest and declines to enter it as an order. If the Court declines to enter the Consent Decree as an order, the Parties shall attempt to resolve the issues identified by the Court and to obtain approval of a revised Decree. If the parties are unable to resolve any issues identified by the Court, or the Court again declines to enter the Decree, the amount to be paid to the United States and to the Commonwealth shall be returned to the Defendant, together with any accrued interest thereon.

9. Within five (5) business days after the date of Defendant's receipt of notice of entry of this Consent Decree, Defendant shall, through the escrow agent or trustee, remit the Civil Penalty amount in the escrow or trust account to the United States and DEP. Defendant shall remit one-half of the Civil Penalty amount plus one-half of any accrued interest in the escrow or trust account to the United States and one-half of the Civil Penalty amount plus one-half of any accrued interest in the escrow or trust account to the Commonwealth of Pennsylvania in accordance with the requirements of Paragraphs 10 and 11 of this Consent Decree.

10. J & L shall make a civil penalty payment of \$43,718 plus one-half of the accrued interest in the escrow or trust account to the United States by electronic funds transfer (“EFT”) to the United States Department of Justice lockbox bank, and referencing DOJ Case Number 90-5-1-1-08243, and the U.S. Attorney’s Office File Number _____. J & L shall also make a payment of \$6,282, which is allocated to the violations of Section 311 of the Clean Water Act, 33 U.S.C. § 1321, to the Oil Spill Liability Trust Fund. The total payment to the United States shall be made in accordance with instructions provided to the Defendant by the United States upon lodging of this Decree. J & L shall be responsible for the costs of such electronic funds transfer. Any EFT received at the United States Department of Justice lockbox bank after 3:00 p.m. (eastern time) will be credited the following business day. The United States Attorney’s Office will advise its online accounting office to initiate the appropriate Online Payment and Collection transaction to the United States Coast Guard National Pollution Funds Center for that portion of the civil penalty allocated to violations of Section 311 of the Clean Water Act, 33 U.S.C. § 1321. J & L shall send a copy of the EFT authorization form, the EFT transaction record, and the transmittal letter to:

Regional Hearing Clerk
Region III U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

and to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044,
Attention: DOJ No. 90-5-1-1-08243

and to:

United States Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203

11. Payment of the civil penalty of \$50,000, plus one-half of the accrued interest in the escrow or trust account, to the Commonwealth of Pennsylvania shall be by corporate check made payable to the "COMMONWEALTH OF PENNSYLVANIA, CLEAN WATER FUND" and sent to the Compliance Specialist, Water Quality Management, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222 - Attention Patricia Miller.

12. If Defendant fails to make timely payment of the Civil Penalty in accordance with Paragraphs 10 and 11, above, it shall be liable for interest and penalties for late payment as follows: (1) interest on any delinquent penalty amount at the percentage rate established by the Department of Treasury pursuant to 31 U.S.C. § 3731 (as of the due date), for any period after the due date; (b) a late payment fee of \$5,000 per day for each day after the due date that the Civil Penalty is not paid to the United States; (c) a late payment fee of \$5,000 per day for each day after the due date that the Civil Penalty is not paid to the DEP; and (d) administrative costs of collecting the penalty calculated in accordance with 40 C.F.R. § 13.11(b) and assessed monthly throughout the period the penalty is overdue.

V. COSTS

13. Except as provided for in Paragraph 14 of this Decree, below, the parties to this Decree shall bear their own costs of litigation in this civil action, including, but not limited to, attorney and expert witness fees.

14. This Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69 and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308. If Defendant fails to pay an amount that is owing to the United States or the Commonwealth of Pennsylvania pursuant to the requirements of this Decree and in accordance with the time periods set forth in this Decree, Defendant shall be liable and shall pay for attorneys fees and costs incurred by the United States and/or the Commonwealth of Pennsylvania to collect any such amount.

VI. SUBMISSION OF DOCUMENTS

15. Whenever under the terms of this Consent Decree notice is to be given, or a report or other document is to be forwarded, by one party to another, it shall be directed to the following addresses unless otherwise provided in this Decree or unless the sending party has been advised in writing by the receiving party that such notice and reports should be forwarded to a different individual or address. Any such materials shall include a reference to the name, caption and number of this action.

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference DOJ # 90-5-1-1-08243

As to EPA:

Paul G. Dressel (3EC00)
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
215-814-2905 (telefax)

Joyce A. Howell (3EC00)
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103
215-814-2905 (telefax)

As to the Department of Environmental Protection:

Compliance Specialist
Water Quality Management
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222
Attention Patricia Miller

As to the Defendant:

President
J & L Specialty Steel, L.L.C.
Westpointe Corporate Center
1550 Coraopolis Heights Road
Suite 500
Coraopolis, PA 15108-6934
412-375-1746 (telefax)

With a copy to:

Chester R. Babst III
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222
412-394-6576 (telefax)

VII. COMPLIANCE WITH APPLICABLE LAWS

16. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Defendant's complete compliance with this Consent Decree will constitute or result in compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., Defendant's NPDES Permit No. PA0005754, and the Clean Streams Law of Pennsylvania. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable federal, state, and local laws, regulations, and permits. Except as to a claim of contempt of court, the parties agree that compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to such laws or regulations. The Defendant shall be responsible for obtaining all federal, state, and local permits that are necessary for the performance of any work required by this Decree.

VII. RESERVATION OF RIGHTS

17. The provisions of this Decree shall not be construed to limit any other remedies, including, but not limited to, institution of proceedings for civil or criminal contempt or injunctive relief, otherwise available to Plaintiffs for violations of this Decree or any provisions of applicable law. This Decree shall not be construed to prevent or limit the application of the provisions of the Clean Water Act or the Clean Streams Law of Pennsylvania or the provisions of any regulation promulgated thereunder.

18. Except as otherwise expressly provided in this Decree, the parties reserve all of their rights, claims, and defenses available at law or in equity. Nothing in this Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of Defendant, if any, or to waive or limit any rights or defenses Defendant may have in any criminal proceeding, by whomever initiated.

19. Nothing in this Consent Decree shall relieve the Defendant of its obligation to comply with all applicable federal, state, and local laws and regulations. Nothing contained in this Consent Decree shall be construed to prevent, alter, or limit the rights of the United States, or DEP, to seek or obtain other remedies or sanctions available under other federal, state, or local statutes or regulations, against the Defendant for the Defendant's violation of this Consent Decree or of any applicable federal, state, and/or local laws and regulations. This shall include the right of the United States, and of DEP, to invoke the authority of the Court to order Defendant's compliance with this Consent Decree in a subsequent contempt action.

20. This Consent Decree is neither a permit nor a modification of any existing permit and shall not be interpreted to be such. With the exception of issues of fact or law relating to the jurisdiction of the Court, this Consent Decree shall not constitute an admission or adjudication of any issue of fact or law relating to the claims of the United States and the Commonwealth of Pennsylvania.

21. Plaintiffs' agreement to the amount of the Civil Penalty required by Paragraph 6 of this Consent Decree is based on Defendant's Financial Information submitted to the United States by Defendant, including, but not limited to, the Declaration attached hereto as Appendix 1. Defendant certifies that the Financial Information is true, accurate and complete and that there has been no material change in Defendant's financial condition between the time the Financial Information was submitted and the Defendant signed this Consent Decree. Plaintiffs reserve the right to take action under this Consent Decree or, if deemed appropriate, to institute a new and separate action to recover additional payment of civil penalties for the claims alleged in either of their respective Complaints if Plaintiffs determine Defendant's Financial Information or representations made by Settling Defendant in the Declaration attached hereto as

Appendix 1 are false, inaccurate, or incomplete. This right shall be in addition to all other rights and causes of action, civil or criminal, the United States may have under law or equity in such event.

22. Plaintiffs' agreement to the terms of this penalties-only Consent Decree is based, in part, on J & L's representations to Plaintiffs that the Midland Facility will be sold on or about June 1, 2004. In the event that the Midland Facility is not sold on or about June 1, 2004, the Plaintiffs reserve the right to seek amendment or modification of this Consent Decree to include injunctive relief for the violations alleged in the Complaints.

IX. AUTHORITY

23. The parties to this Decree represent to this Court that one or more of their respective undersigned counsel and other signatories have full authority to approve the provisions of this Decree, to execute this Decree, and to legally bind the parties to this Decree.

X. NOTICE AND COMMENT

24. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. Upon execution by the parties, this Consent Decree shall be lodged with the Court for a period of not less than twenty (20) days for public notice and comment. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate.

XI. RETENTION OF JURISDICTION

25. This Court shall retain jurisdiction from the date of entry of this Decree through the date of termination of this Decree for the purpose of modifying or construing this Decree, and enforcing the rights and obligations of the parties to this Decree.

XII. MODIFICATION

26. Any modifications of this Consent Decree must be in writing and approved by the Court. Any agreed upon written modification must be signed by the parties to this Consent Decree. No party may petition the Court for modification without having first made a good faith effort to reach agreement with the other party on the terms of such modification.

XIII. TERMINATION

27. This Consent Decree shall terminate one hundred and twenty (120) days after the date of entry, provided that Defendant has completed and complied with all requirements of this Consent Decree, including but not limited to, the payment of the Civil Penalty plus accrued interest required by Section IV of this Decree and payment of any late fees required by Paragraph 12 of this Consent Decree.

FOR PLAINTIFF UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 5/20/04

DONNA D. DUER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3475

Date: _____

FOR PLAINTIFF UNITED STATES OF AMERICA

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and Commonwealth of Pennsylvania v. J & L Specialty Steel, L.L.C., Civil Action No.

_____.

MARY BETH BUCHANAN
United States Attorney
Western District of Pennsylvania

By: _____

Date: _____

ROBERT L. EBERHARDT
Assistant United States Attorney
Western District of Pennsylvania
Suite 400, U.S. Post Office & Courthouse
700 Seventh Avenue
Pittsburgh, PA 15219
(412) 894-7353
PA ID No. 10325
Robert.Eberhardt@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and Commonwealth of Pennsylvania v. J & L Specialty Steel, L.L.C., Civil Action No.

_____.

FOR PLAINTIFF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

THOMAS V. SKINNER /
Acting Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and Commonwealth of Pennsylvania v. J & L Specialty Steel, L.L.C., Civil Action No.

FOR PLAINTIFF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 5/16/04

for WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: May 6, 2004

JOYCE HOWELL
Senior Counsel
Office of Enforcement, Compliance,
and Environmental Justice (3EC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and Commonwealth of Pennsylvania v. J & L Specialty Steel, L.L.C., Civil Action No.

FOR PLAINTIFF COMMONWEALTH OF PENNSYLVANIA:

TIM V. DREIER
Regional Manager for Water Management
Commonwealth of Pennsylvania
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

Date: _____

ZELDA CURTISS
Assistant Counsel
Office of Chief Counsel
Commonwealth of Pennsylvania
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745

Date: _____

Date: 5-5-04

Chester Babst III
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222

Date: 5/5/04

Daniel Amidon
General Counsel
J & L Specialty Steel, L.L.C.
1550 Coraopolis, Heights Road
Coraopolis, PA 15108

Judgment is hereby entered in accordance with the foregoing

Consent Decree, this ____ day of _____ 2004.

UNITED STATES DISTRICT JUDGE
Western District of Pennsylvania

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and Commonwealth of Pennsylvania v. J & L Specialty Steel, L.L.C., Civil Action No.

FOR DEFENDANT J & L SPECIALTY STEEL, L.L.C.:

Chester Babst III
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center
Pittsburgh, PA 15222

Date: _____

Daniel Amidon
General Counsel
J & L Specialty Steel, L.L.C.
1550 Coraopolis, Heights Road
Coraopolis, PA 15108

Date: _____

Judgment is hereby entered in accordance with the foregoing

Consent Decree, this ____ day of _____ 2004.

UNITED STATES DISTRICT JUDGE
Western District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA_____
UNITED STATES OF AMERICA,

and

COMMONWEALTH OF PENNSYLVANIA,

Plaintiffs,

v.

J & L SPECIALTY STEEL, L.L.C.,

Defendant.

Civil No.

DECLARATION

I, Daniel W. Amidon, hereby certify that the following documents were prepared in the ordinary course of business consistent with past practices and, based upon my knowledge, contain accurate and complete information concerning the financial condition of J & L Specialty Steel, L.L.C., and its predecessor, J & L Specialty Steel, Inc., as of the date of and for the periods referenced in each such document.

1. Completed "Financial Statement of Corporate Debtor" and all attachments;
2. United States Corporate Income Tax Returns for J & L Specialty Steel, L.L.C. for years 1998 through 2002;
3. Unaudited Financial Statements, including the Balance Sheets and Income Statements for the years ending December 31, 1998 through December 31, 2003, and,

4. Letter dated March 29, 2004 from Daniel W. Amidon, General Counsel, J & L Specialty Steel, L.L.C., to Donna D. Duer, Environmental Enforcement Section, Department of Justice.

I further certify I have reviewed the documents identified in this Declaration. Based on my knowledge, the Financial Information submitted to EPA and DOJ in connection with this matter does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by those statements;

Based on my knowledge, the financial statements and other Financial Information submitted to EPA and DOJ, fairly present in all material respects the financial condition and results of operations for the period covered by those statements.

I further certify that the financial condition of J & L Specialty Steel, L.L.C. has not changed materially from the date of submission of the documents identified above until the date of my signature to this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

5/5/04
